

REMARKS

Claims 1-9, 11 and 13-25 are currently pending in this application. Claims 1, 18 and 23-25 have been amended. Applicant has carefully reviewed the Office Action and respectfully requests reconsideration of the claims in view of the remarks presented below.

Claim Rejections Under 35 U.S.C. §102

Claims 1-2, 4-6, 8-9, 11, 13-15, 19-20, 23 and 25 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,719,701 (Lade).

Claim 1 recites a method for controlling the storing and recording of diagnostic data within an implantable medical device having a temporary memory and a long-term memory. The method includes monitoring cardiac rhythm through the implantable medical device; evaluating the cardiac rhythm to determine the likelihood that a cardiac arrhythmia will arise; controlling the storing and recording of diagnostic data associated with the cardiac rhythm such that no diagnostic data is stored in the implantable temporary memory until it has been determined that a cardiac arrhythmia is likely to arise; if it is determined that a cardiac arrhythmia is likely to arise, evaluating the cardiac rhythm to determine if a cardiac arrhythmia did actually occur; and controlling the storing and recording of diagnostic data associated with the cardiac rhythm such that no diagnostic data is transferred from the implantable temporary memory and recorded in the implantable long-term memory until it has been determined that a cardiac arrhythmia did actually occur. Claims 23 and 25 recite similar subject matter.

Lade discloses an implantable microprocessor 60 with a memory, into which physiological data are continuously stored, with the oldest data being overwritten by the newest data. If a trigger event occurs, data from the microprocessor memory is written into implantable memory 94 where it is stored for subsequent download to a device 102 that is external the implantable device. See column 7, lines 18-22 and 44-47. In the Office Action, the Lade external device 102 is considered to correspond to Applicant's implantable long-term memory. Clearly, the Lade external device 102 is not an

implantable device and thus the rejections of claims 1, 23 and 25 are improper on this basis.

Even if the Lade external device were somehow construed to correspond to an implantable memory, features of claims 1, 23, 25 would still not be present in Lade. Lade describes that data in memory 94 (purported to correspond to Applicant's temporary memory) is stored until it is downloaded to an external device 102 (purported to correspond to Applicant's long-term memory). There are no conditions placed on this download. For example, Lade does not specify that no diagnostic data is transferred from the implantable temporary memory (Lade memory 94) and recorded in the implantable long-term memory (Lade external device 102) until it has been determined that a cardiac arrhythmia did actually occur.

In view of the foregoing, Applicant submits that Lade fails to disclose the combinations of elements and features recited in independent claims 1, 23 and 25, including an implantable long term memory, the storing and recording of diagnostic data associated with a cardiac rhythm such that no diagnostic data is stored in an implantable temporary memory until it has been determined that a cardiac arrhythmia is likely to arise, and the storing and recording of diagnostic data associated with the cardiac rhythm such that no diagnostic data is transferred from the implantable temporary memory and recorded in an implantable long-term memory until it has been determined that a cardiac arrhythmia did actually occur. Accordingly, Applicant requests reconsideration of the §102 rejections of claims 1, 23 and 25.

Applicant further submits that, by virtue of the incorporation of subject matter recited in their respective independent base claim, each of dependent claims 2, 4-6, 8-9, 11, 13-15, 19-20, 23 and 25 is also novel over Lade.

Claim Rejections Under 35 U.S.C. §103

Claim 3 was rejected under 35 U.S.C. §103 as being unpatentable over Lade in view of in view of U.S. Patent No. 6,400,982 (Sweeney). Claims 7 and 14 were rejected under 35 U.S.C. §103 as being unpatentable over Lade.

In view of the foregoing analysis of independent claim 1 in view of Lade, Applicant submits that, by virtue of the incorporation of subject matter recited in their independent base claim 1, dependent claim 3 is nonobvious over Lade and Sweeney, and dependent claims 7 and 14, are nonobvious over Lade.

Furthermore, I, David Sarisky, an attorney of record for the present U.S. Patent Application 10/782,684 ("the '684 application"), states that the '684 application and U.S. Patent No. 6,719,701 (Lade), were at the time the invention of the '684 application was made, owned by Pacesetter, Inc. or subject to an obligation of assignment to Pacesetter, Inc. Therefore, in accordance with the American Inventors Protection Act, Lade does not qualify as prior art under 35 U.S.C. §103(a) via 35 U.S.C. §102(e) because the '684 application was filed on or after November 29, 1999 and the subject matter of Lade and pending claims 3, 7 and 14 were, at the time the invention was made, owned by or subject to an obligation of assignment to the same organization.

Allowable Subject Matter

Claims 16-18 and 24 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claims and any intervening claims.

Regarding claims 16 and 17, in view of the remarks presented above with respect to the rejections of independent claim 1, Applicant believes claims 16 and 17 are allowable without amendment. Applicant, however, reserves the right to amend these claims at a later time.

Regarding claims 18 and 24, each has been rewritten in independent form and is believed to be in condition for allowance.

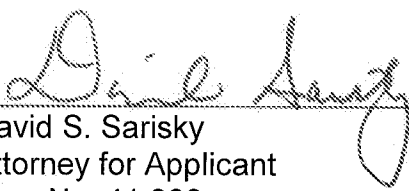
CONCLUSION

Applicant has made an earnest and bona fide effort to clarify the issues before the Examiner and to place this case in condition for allowance. Therefore, allowance of Applicant's claims 1-9, 11 and 13-25 is believed to be in order.

Respectfully submitted,

Date

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